Supreme Court, U.S.
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IN THE

Supreme Court of the United States

WYATT HENDERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

FRED WARREN BENNETT*
RACHEL MARBLESTONE KAMINS
Bennett & Bair, LLP
6301 Ivy Lane, Suite 418
Greenbelt, Maryland 20770
301.220.1570

Counsel for Petitioner

**Counsel of Record*

QUESTION PRESENTED

Is the Sixth Amendment's requirement that juries be selected from a fair cross-section of the community violated by the mandatory exemption under 28 U.S.C. § 1863(b)(6) of state and local police officers and by the Jury Plan of the Middle District of Florida, which exempts all state, local, federal, part-time and private law enforcement officers from jury service?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties below.

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Petitioner, Wyatt Henderson, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 409 F.3d 1293 (11th Cir. 2005) (App. 1a). The Order of the United States District Court for the Middle District of Florida, Fort Myers Division, was issued on November 10, 2003. (App. 33a). The Order of the United States Court of Appeals for the Eleventh Circuit denying Petitioner's Petition for Rehearing En Banc was issued on July 15, 2005. (App. 46a).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit was entered on May 23, 2005. (App. 1a). A petition for rehearing en banc was denied on July 15, 2005. (App. 46a). This petition is filed within 90 days of the denial of the petition for rehearing en banc. Therefore, the jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

United States Code Annotated, Title 28, § 1863. Plan for random jury selection. (App. 48a).

STATEMENT OF THE CASE

The criminal charges against Petitioner, formerly a corporal with the Charlotte County, Florida, Sheriff's Department, arose from accusations that he unlawfully assaulted an arrestee, Christopher Grant, and then made a false police report of the incident. (App. 1a-2a). Grant had been the target of the Charlotte County Sheriff's Department's Vice and Organized Crime Component (VOCC) for selling marijuana. (App. 1a). VOCC officers set up an undercover sting operation, hoping to apprehend Grant in a parking lot and arrest him. (App. 1a). Before officers were able to detain him, however, Grant fled the scene. (App. 2a).

Petitioner had been stationed in an unmarked car within view of the parking lot and began pursuing Grant's vehicle. (App. 2a). Petitioner apprehended Grant on the side of the road and ordered him out of the car and to lie down. (App. 2a). According to Petitioner, Grant refused to comply with this directive. (Tr. 12/05/03 at 588-89). In the meantime, several additional officers arrived on the scene. (App. 3a). Detective Keith Barnett testified that Petitioner approached Grant with his gun in his right hand and placed his knee on Grant's back to push him to the ground. (App. 3a). On the way down, Grant's chin struck the pavement. (App. 3a). At trial, the parties agreed that this initial takedown was lawful and that any injury sustained to Grant's chin did not form the basis of the charges against Petitioner. (App. 3a).

According to Grant's and another witness's testimony, Petitioner then struck Grant in the jaw with his gun. (App. 3a).

Petitioner, however, insisted that he had put his gun in his car prior to approaching Grant because he was not wearing a holster and did not want to confront Grant with a loose weapon. (Tr. 12/5/03 at 600-01). The defense also offered evidence that any injuries sustained by Grant were the result of his hitting the pavement during the takedown. (App. 3a). Furthermore, Grant claimed to have been struck by a person with white hair and a white moustache, which fit the description of another officer on the scene. (Tr. 12/04/05 at 399-400; Tr. 12/05/03 at 568-69). The evidence at trial established that Petitioner had black hair and a black moustache on the day of the incident. (Tr. 12/05/03 at 565-66).

Subsequent to the incident, police witnesses testified that Petitioner made incriminating statements admitting that he had struck Grant with his gun. (App. 3a). They also testified that Petitioner told other VOCC officers–his subordinates–not to include details of the arrest in their own police reports. (App. 3a). One of the officers, Detective Bennett, testified that Petitioner told him to deny that he had struck Grant. (App. 3a-4a).

Petitioner's own report asserted that no force had been used during the arrest. (App. 4a). When interviewed by an FBI agent investigating Grant's allegation of excessive force, Petitioner stated that he had put his gun in his car before approaching Grant. (App. 4a). This statement formed the basis of the government's charge that Petitioner made a false statement material to the investigation. (App. 4a).

Petitioner was charged in a three-count indictment with assault under color of law in violation of 18 U.S.C. § 242; misleading local law enforcement officials in violation of 18 U.S.C. § 1512(b)(3); and making false statements to the FBI in violation of 18 U.S.C. § 1001. (App. 1a-2a). Prior to trial,

Petitioner filed a Motion to Dismiss Indictment and Motion for Alternative Petit Jury Pool. In the Motion, Petitioner asserted that he was denied his Sixth Amendment right to have his jury selected from a fair cross-section of the community by virtue of the Middle District of Florida's adoption of the provisions of 28 U.S.C. 1863(b)(6), barring state and local police officers from serving on juries.

Petitioner also challenged the Middle District of Florida's implementation of the federal scheme in its Plan for the Qualification and Random Selection of Grand and Petit Jurors ("Jury Plan"), (App. 54a), and through its use of the Juror Questionnaire Form, (App. 74a), which goes a step further and exempts *federal* law enforcement officers, as well. (App. 77a). Petitioner further challenged the pattern and practice of the Middle District of Florida to exempt any person with arrest powers, including part-time and even private law enforcement officers. In support of his Motion, Petitioner produced demographic evidence demonstrating that at least 0.55% of the eligible juror pool in the Fort Myers Division of the Middle District is exempt as law enforcement officers. (App. 40a).

A hearing was held on November 3, 2003. The district court denied the Motion in a written Order issued on November 10, 2003. (App. 33a). The court held that, assuming without deciding that Petitioner had made a prima facie showing that the jury selection process does not produce a fair cross-section of the community, the Government "sufficiently rebutted [Petitioner's] case by demonstrating a significant state interest: keeping state and federal law enforcement officers on the street." (App. 40a-41a).

Petitioner was tried by a jury on December 3-10, 2003 and was convicted on all three counts. His Motion for Judgment Notwithstanding the Verdict or For New Trial was denied on

February 19, 2004. Petitioner was sentenced on March 1, 2004 to two concurrent sentences of 87 months' imprisonment on Counts 1 and 2, and 60 months' imprisonment on Count 3, to run concurrently. The district court entered its judgment on March 5, 2004 and entered an amended judgment on March 12, 2004.

The Eleventh Circuit Court of Appeals affirmed the judgment on the basis that the exclusion of jurors to the extent dictated by 28 U.S.C. § 1863 was constitutional. (App. 21a). With respect to the use of the Juror Questionnaire and the pattern and practice of the Middle District of Florida which, combined, served to exclude from jury service all state, local, federal, part-time and private law enforcement officers, the Court held that such officers "would only compose a fraction of the 0.55% of eligible jurors in the pool" and, as such, it could be "fairly said that the jury lists or panels are representative of the community." (App. 21a). Moreover, the Court held, this broader exemption served the "significant state interest of allowing police officers to perform their duties without the interruption of jury service." (App. 21a).

Petitioner filed a Petition for Rehearing *En Banc*, arguing that he was denied his constitutional right to a jury chosen from a fair cross-section of the community. The Petition was denied by the panel on July 15, 2005. (App. 46a).

REASONS FOR GRANTING THE WRIT

Petitioner was a police detective with the Charlotte County, Florida Sheriff's Department when he was indicted by a grand jury convened in the Middle District of Florida on charges of excessive force, submission of a false police report and making a false statement while employed as a detective. In accordance with the Jury Selection and Service Act of 1968, as

implemented and expanded upon by the Middle District, there were no law enforcement officers in the pool of jurors from which the grand jury indicting Petitioner was drawn, nor were there any law enforcement officers in the pool of jurors from which the petit jury that convicted Petitioner was drawn.

The Jury Selection and Service Act, which is codified at 28 U.S.C. § 1861 et seq. ("The Act"), requires each United States District Court to "devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of [the Act]." *Id.* at § 1863(a) (2005). Section 1863(b)(6) of the Act exempts from jury service, *inter alia*, "members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession[.]" The original idea behind such exemptions was to exclude individuals with jobs essential to the public welfare. Congress explicitly acknowledged, however, that excuses and exemptions undercut the representativeness of the jury pool. H.R. Rep. No. 1076, 90th Cong., 2d Sess. (1968), at 1797.

Having been indicted and convicted by juries on which, ironically, neither Petitioner nor any of his colleagues–nor any type of law enforcement officer whatsoever–would have been permitted to serve, Petitioner was denied his Sixth Amendment right to a fair cross-section of the community in the pools from which his grand and petit juries were chosen. Petitioner introduced demographic information that at least 3,000 potential jurors in the Fort Myers Division of the Middle District were automatically exempted from jury service due to their police officer status. The Act, which automatically exempts state and local law enforcement officers from serving on juries, is unconstitutional. Moreover, the Jury Plan implemented by the Middle District of Florida, which expands the